Hork County Prison, W IIIDGE'S COPYC 3400 Concord Road al Hork P.A. 17402 Date September 6 2001 NAME: DESMOND V. GAYLE ID# 55438 INS# A74-891-110 ImmigRation To: The HONORAble William W. CAldwell, (Judge) HARRISBURG United States District Court SEP 10 2001 Middle District of Pennsylvania MARYE D'ANDREA, CLERK United States Courthouse DEPUTY OLEHK 228 WAlnut Street t.o. Box 983 HARRISBURG, P.A. 17108 On this EDAY of September, the year 2001 Filed this Motion, to be Release From the Custody of INS, By the United States Attorney General John Ashcroft, Sturkt E. Schiffer Deputy And Christophe. I Am Requesting Release Under the New Rules of t Suffere Court, that came in Effect July 2001. IN ZADVYDAS V. DAVIS 121 S. Ct 2491 (US. June 2

| เท บทเา | 'ed States | OF TEQUE | TOTOR ATTORNEY EX | PERT OR OTHER | FIDAVIT COURT SERVICES WIT | THOUT PAYMENT OF | CJA 23 (Rev. 5/98) FEE: |
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| NC | /30N | ROVIA | PEVALU | Felony | 2 Defendant – Jun 3 Depellant 4 Derobation Violator 5 Derobation Violator | venile District Court of | ourl Appeals |
| P | ossesio Cont | | th intent Substance. | | 7 Cl 2255 Petitioner 8 Cl Material Witnes 9 Cl Other (Specify) | | |
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| ASSETS < | OTHER INCOME | | | | | | |
| | CASH | Have you an | y cash on hand or money i | n savings or checki | ng account 🗆 Yes 🔼 No | IF YES, state total armo | ount \$ |
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Supreme Court of Pennsylvania Middle District

JOAN L. STEHULAK, ESQUIRE DEPUTY PROTHONOTARY

SHIRLEY BAILEY CHIEF CLERK

September 22, 1998

434 MAIN CAPITOL BUILDING F.O. 80X 624 HARRISBURG, PENNSYLVANIA 17108

(717) 787-6181

hitp://www.courts.state.pa.us

TO: Francis M. Socha, Esquire

RE: COMMONWEALTH OF PENNSYLVANIA

RESPONDENT

NELSON R. PENALVER

PETITIONER

No. 0209 M.D. Allocatur Docket 1998

Dear Counsel:

This is to advise you that the attached order has been entered on the Petition for Allowance of Appeal filed in the above-captioned matter.

Very truly yours, Office of the Prothonotary Supreme Court of Pennsylvania

SB/aks

c: Hon. Richard A. Lewis
Dauphin; 2396CD94
Criminal Division
Jeffrey B. Engle, Deputy District Attorney

Case 1.91 cv 91292 WWC PT Decument 13 Filed 09/10/2001 Page 4 of 13

IN THE SUPREME COURT OF PENNSYLVANIA MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA

: No. 209 Middle District

: Allocatur Docket 1998

Respondent

٧.

NELSON R. PENALVER

Petitioner

: Petition for Aliowance of Appeal

ORDER

PER CURIAM

AND NOW, this 22nd day of September, 1998, the Petition for Allowance of Appeal is denied.

TRUE & CORRECT COPY

ATTEST:

SEP 22 1998

SHIRLEY BAILEY
CHIEF CLERK

2

IN THE SUPREME COURT OF PENNSYLVANIA FOR THE MIDDLE DISTRICT

NO.

M.D. ALLOCATUR DOCKET, 1998

COMMONWEALTH OF PENNSYLVANIA,

Respondent

vs.

NELSON R. PENALVER,

Petitioner

PETITION FOR ALLOWANCE OF APPEAL

Petition for Allowance of Appeal by NELSON R. PENALVER from the Order of the Superior Court at No. 401 Harrisburg 1997, dated March 13, 1998, affirming judgment of sentence of the Dauphin County Court of Common Pleas at No. 2396 CD 1994

FRANCIS M. SOCHA, ESQ.

2201 North Second Street

Harrisburg, PA 17110

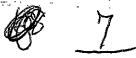
(717) 233-4141

Dated: March 20, 1998

Attorney for Petitioner

11 8 a 199;

Midde



IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 401 Harrisburg 1997

COMMONWEALTH OF PENNSYLVANIA,

Appellee

vs.

NELSON R. PENALVER,
Appellant

Received in Substint Court

BRIEF FOR APPELLANT

Appeal from the Order of the Honorable Richard Lewis Court of Common Pleas, Dauphin County,
Dated April 3, 1997, and
Docketed at 2396 C.D. 1994

FRANCIS M. SOCHA, ESQ.
2201 North Second Street
Harrisburg, PA 17110
(717) 233-4141

Attorney for Appellant

Case 1:01-cv-01282-WWG-PT - Document 13 Filed 09/10/2001 Page 7-of 13

LAW OFFICES

FRANCIS M. SOCHA

2201 NORTH SECOND STREET
HARRISBURG, PENNSYLVANIA 17110

FRANCIS M. SOCHA CLAYTON W. DAVIDSON

TELEPHONE (717) 233-4111

FAN (717) 233-2342

September 28, 1998

Nelson Penalver Temp-3E48 (24696) 3000 Perdidos St. New Orleans, LA 70119

Dear Mr. Penalver:

Enclosed is a copy of the Pennsylvania Supreme Court's Order denying your petition for allowance of appeal. Unfortunately, this concludes my representation with your case.

If you still would like to challenge your conviction, I suggest that you contact the Federal Public Defender's Office at 100 Chestnut Street, Suite 306, Harrisburg, Pennsylvania, 17101 (Phone # 717-782-2237) and file a writ of habeas corpus in Federal Court for the Middle District of Pennsylvania.

I wish you the best in the future.

Sincerely,

Francis M. Socha

\cec Enclosure

TO US DISTRIC COUST.

IN THE Appeal There was some erros. I was Taken
To Luisiana by The government. There is a complaint:
Appeal already done in Luisiana... Depeatoutly
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Docket # 2396 CD: IN 1994

The Commonwealth presented testimony that the appellant, delivered to (10) bags of crack cocaine to Officer Pelino. [N.T. 25, lis. 15-16; N.T. 36, lis. 6]. The testimony indicated, however, that the appellant was never seen physically handing the undercover officer any narcotics. [N.T. 25, lis. 15-16]. No narcotics were found on the appellant's person when he was taken into custody. [N.T. 54, lis. 15-22]. No corroborating fingerprints were taken from any of the confiscated packages. [N.T. 48, lis. 8].

The confidential informant that was present with Mr. Penalver was never patted down and searched prior to the transaction in this case. [N.T. 44, lis. 20-23]. The extent of the informant's association with this particular police operation was one prior incident. [N.T. 39, lis. 4-6]. No background check was performed on the informant so a to test the informant's veracity and reliability. [N.T. 38, lis. 15-16].

The conviction in this instance was based on the speculation of an undercover officer who never saw the appellant hand him any controlled substance. The search of the appellant incident to his arrest produced no narcotic substances. [N.T. 54] lis. 15-22]. The Commonwealth bases its conjectured claim of delivery of a controlled substance on the reliability of an informant the undercover agents hardly knew. [N.T. 30, lis. 15-16]. The agents never had the time or inclination to run a prior records check on a person that induced the entire transaction. [N.T. 38, lis. 15-16]. Further, the informant was not checked prior to the transaction for possession of a controlled substance. [N.T. 44, lis. 20-23]. It was shear speculation on the part of Officer Pelino to assume that the appellant carried and delivered crack cocaine when nothing was done to insulate appellant from a problematic informant.

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Nelm Rovin Penly

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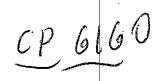
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United states District Court Petitioner Consent to withness

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Page 1

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| | Us Airways locator: CNUZAP | | |
|)4Sep01 06:50pm | AIR Us Airways From: Charlotte NC, USA | Flight# 358 Class: Y To: Harrisburg: Intl PA, USA | |
| uesday | Meal: None | | |
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FE-Back Screen

U.S. District Count Harribody, PA.

09-6160

III. QUESTIONS PRESENTED FOR REVIEW

DID THE SUPERIOR COURT ERR IN AFFIRMING THE LOWER COURT'S RULING THAT TRIAL COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO REQUEST A MISSING WITNESS INSTRUCTION AFTER COMMONWEALTH FAILED TO CALL A MATERIAL WITNESS?

United STATE DISTric Court. -9-06-01 THIS is my STATEMENT, THE PETITIONER Nelson I. PENA I came From Lusiana on Sept-4-01 lopy of arrival Enclosed. I'm including a copy of AiRLINE Tickets.

I Have 2 Lawsuits To THE Federal Eastern Dist. Com of Luisiana, For devied Equal Right constitution ... THE Following Evidence Are being sent To you, because THE prosidier was NOT done in Time, THE Court Took Too Long, And THEN I was devied. I belived I Have right as I requested To Plend THE FITH. THE Supreme Court HAS THE DENIAL And THE superial Court Has gave me THE right To Appeal. It you need To contact me perpect of

THANK YOU.

| | - Carrier Colored Colo | 2 Filed 00 | /40/2004 Page 12 of 12 | _ |
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| | NOTICE AND AS OF SUMMON | S AND COMPL | MENT OF RECEIPT AINT BY MAIL | tiff Cop |
| | Uni | ed States District | Court | |
| ; : | Eastern | for the District of | Louisiana | |
| | | District of | Bourstana | |
| | TO: U. S. Attorney General | | Civil Action, File Number 01- | 782-N (2) |
| .] | 10th & Constitution Avenue NW | | N-1 Danie Danie | <u></u> |
| 1 | Room 4400 Washington, D.C. 20530 | • | Nelson Rovira Penalve V. | r |
| 1 | washington, b.c. 20000 | | Anne K. Fenton, Phill | in T. Mille |
| : | | | Mr. Holbrook and Kenn | |
| | · · | | | |
| | The enclosed summons and complaint are served p | surcuant to Rule A | (a)(2)(C)(ii) of the Federal Pules of | Civil Procedure |
| , | THE ENGIOSES SEMINIONS and Complaint are served p | displant to Rule 4 | ACKENCY OF THE PEDELAR RULES OF | Civil 1 loccume |
| | You MUST COMPLETE the acknowledgment p | part of this form | below, AND RETURN COPIES | 1 AND 2 to th |
| | within 20 days. An envelope has been enclosed for this put | pose. Keep copy | 3 for your records. | |
| | | A DD A. (D | | |
| | YOU MUST SIGN AND DATE THE ACKN corporation, unincorporated association (including a p relationship to that entity. If you are served on behalf of under your signature your authority. | artnership), or o | ther entity, you must indicate un | der your signat |
| | If you do not complete and return copies 1 and 2 you are being served) may be required to pay any expenses by law. | | | |
| | If you do complete and return copies 1 and 2 of the complaint within 20 days. If you fail to do so, jud complaint. | | | |
| | I declare, under penalty of perjury, that this Noti- | re and Acknowle | doment of Receipt of Summons as | d Complaint By |
| | mailed on this date. PLEASE RETURN RECEIPT BY | | | id Complaint By |
| | | , 5, 2501 | | to le |
| | 04-25-01 | _ | Mary Coal Mu | where |
| | Date of Signature | | Signature (USMS Official) | |
| | ACKNOWI EDGMENT OF | RECEIPT OF SI | UMMONS AND COMPLAINT | |
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| | I declare, under penalty of perjury, that I received | a copy of the su | mmons and of the complaint in the | above captione |
| | at | | | |
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